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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,514	10/24/2001	Ping Niang Shen	1053-US	6884

7590

07/15/2003

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EXAMINER

FLOOD, MICHELE C

ART UNIT

PAPER NUMBER

1654

DATE MAILED: 07/15/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
10/032,514

Applicant(s)

Shen et al.

Examiner

Michele Flood

Art Unit

1654



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 2, 2003
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 44-55 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 44-55 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☒ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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### DETAILED ACTION

Acknowledgment is made of the receipt and entry of the amendment filed on June 20, 2003. Acknowledgment is made of Applicant's cancellation of Claims 1-3 and 33-43, and newly added claims 44-55.

**Claims 44-55 are under examination.**

#### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 44-55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Newly applied as necessitated by amendment.

With regard to Claim 44, line 1, the article should a be placed before "supercritical" to place the claim in proper grammatical form.

With regard to Claim 44, line 1, "extracts" should be replaced with extract to place the claim in proper grammatical form.

With regard to Claim 44, line 2, the article should an be placed before "aqueous" to place the claim in proper grammatical form.

With regard to Claim 44, line 2, "from" should be replaced with of to place the claim in proper grammatical form.

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With regard to Claim 45, line 3, the article the should be placed before "composition" to place the claim in proper grammatical form.

Claim 45, lines 3-4, is rendered confusing by the phrase "and *Radix Scutellariae* and a pharmaceutically acceptable carrier" because it is unclear as to the subject matter intends to direct the invention. It would appear that Applicant should delete the phrase.

Claim 47, line 4, recites the abbreviation "CO<sub>2</sub>". Abbreviations in the first instance of claims should be expanded upon with the abbreviation indicated in parentheses. The abbreviations can be used thereafter.

Claims 48, 49 and 53-55 recite the limitation "extract or combination of extracts". There is insufficient antecedent basis for this limitation in the claims.

Claim 48 is rendered vague and indefinite by the phrase "comprising about 0.01 percent to about 99.9 percent of effective extract or combination of extracts and about 99.9 percent to 0.01 percent of medical recipients" because it is unclear as to the subject matter Applicant intends to direct the invention.

With regard to Claim 50, line 4, the capital "B" in "Baicalin" should be replaced with a lower case b.

With regard to Claim 51, line 3, the lower case "h" in "herpes", should be replaced with a capital "H".

With regard to Claim 52, line 3, the lower case "s" in "shigella", should be replaced with a capital "S".

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Claim 52, line 3, recites the term "Bacillus coli", which is an archaic term for *Escherichia coli*. Applicant may overcome the rejection by replacing the term with *Escherichia coli*, as the term "Bacillus coli" has been replaced with the new terminology, namely *Escherichia coli*.

All other cited claims depend directly or indirectly from rejected claims and are, therefore, also, rejected under U.S.C. 112, second paragraph for the reasons set forth above.

***Priority***

Per a telephonic interview on July 10, 2003, Applicant's representative, Mr. Chan, acknowledged that he has possession of the certified copy of the foreign priority document and that he would forward the document to the Office to place the application in compliance with 35 U.S.C. 119(b).

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*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Flood whose telephone number is (703) 308-9432. The examiner can normally be reached on Monday through Friday from 7:15 am to 3:45 pm. Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 receptionist whose telephone number is (703) 308-0196 or the Supervisory Patent Examiner, Brenda Brumback whose telephone number is (703) 306-3220.

MCF

July 11, 2003



**CHRISTOPHER R. TATE  
PRIMARY EXAMINER**